IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6868 of 2007()

CRIME NO. 464/07 OF ANTHIKKAD POLICE STATION

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PETITIONER/ACCUSED NO.2

RAJNI SUBRAMONIAN, W/O.SUBRAMONIAN,
AMINIKKATTU HOUSE, KAIPPILLY, ARIMPUR,
THRISSUR.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: STATE

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO.464 OF 2007 OF ANTHIKKAD
POLICE STATION).

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6868 of 2007

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Dated this the 14th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner/A2 is the wife of the first accused. She faces allegations under Section 420 r/w. 34 I.P.C. The crux of the allegations is that the accused persons, two in number, in furtherance of their common intention had fraudulently induced the victim to part with money on the promise that VISA for employment abroad shall be made available to him. Proper VISA was not furnished. Amount was not returned. It is in these circumstances that the crime was registered.

2. The learned counsel for the petitioner submits that the petitioner is innocent and she may be granted anticipatory bail.

3. The learned Prosecutor opposes the application. He submits that the investigation is now complete. Final report has already been filed. C.C.No. 2390 of 2007 has been filed before the learned Magistrate and cognizance has been taken. It is now

for the petitioner to appear before the learned Magistrate and seek regular bail. There are no circumstances justifying or warranting invocation of the discretion under Section 438 Cr.P.C. in his favour, submits the learned Prosecutor.

4. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

6. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when she

surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

7. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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